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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,107	03/03/2004	Michelle Grandy	Grandy01	4100

91892 7590 06/22/2011  
The Law Office of Charlena Thorpe Inc.  
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EXAMINER
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LE, TAN

ART UNIT	PAPER NUMBER
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3632

NOTIFICATION DATE	DELIVERY MODE
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06/22/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE  
BOARD OF PATENT APPEALS AND INTERFERENCES

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*Ex parte* MICHELLE GRANDY

Application 10/792,107  
Technology Center 3600

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DECISION ON PETITION

This is a decision on the “Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)” filed May 30, 2011 (“Petition”). According to Appellant, the application became abandoned for failure to respond to the Notification of Non-Compliant Brief of January 11, 2010. Petition 3.

*See* 75 Fed. Reg. 15,689 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On December 15, 2009, Appellant filed an Appeal Brief.
2. On January 11, 2010, a Patent Appeal Specialist entered a Notification of Non-Compliant Appeal Brief into the electronic record for this application. The notification granted Appellants a period of one month within which to file a corrected brief, i.e., until February 11, 2010. A review of the electronic record for this application shows that the notification did

not have the official PTOL-90A cover page used by the Office when mailing communications to an applicant.

3. Having received no response to the Notification of Non-Compliant Appeal Brief, the Examiner entered a Notice of Abandonment on July 21, 2010.
4. On May 30, 2011, Appellant filed the present Petition accompanied by a corrected Appeal Brief (amended section). The corrected Appeal Brief is compliant with applicable rules.
5. Appellant states that the Notification of Non-Compliant Appeal Brief was not received. Petition 3. Appellant further states that “it appears based on the Examiner’s delayed acknowledgement of the [1]0/13/2009 [sic] power of attorney/correspondence address change form and 12/15/2009 power of attorney/correspondence address change form, the Examiner likely mailed the Notice of Defective Appeal Brief to the wrong/old correspondence address.” *Id.*

#### RELEVANT AUTHORITY

With respect to revival of an unavoidably abandoned application, 37 C.F.R. § 1.137(a) provides that:

- (a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
  - (1) The reply required to the outstanding Office action or notice, unless previously filed;

- (2) The petition fee as set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

### DISCUSSION

The application became abandoned on February 12, 2010, as a result of Appellant's failure to timely respond timely to the Notification of Non-Compliant Appeal Brief.

Appellant's Petition was accompanied by the reply required, namely a compliant Appeal Brief (Finding 4), and the petition fee set forth in 37 C.F.R. § 1.17(l). A terminal disclaimer is not required because the application was filed on March 3, 2004, which is after the critical date of June 8, 1995 set forth in in 37 C.F.R. § 1.137(d).

Revival under 37 C.F.R. § 137(a), requires, *inter alia*, an evidentiary showing that the delay was unavoidable. *See* MPEP § 711.03(c)(II)(C).2.

Appellant's evidentiary showing relies on "USPTO PAIR records." Petition 3.

Appellant notes that "[b]ased on the USPTO PAIR records, it is not clear where this [Notification of Non-Compliant Appeal Brief] was delivered. In the USPTO records, the front cover page, indicating where the notice was delivered, is missing." *Id.* A review of the electronic record for this application shows that a cover page in the form of a blank page was used instead of the official PTOL-90A cover page used by the Office when

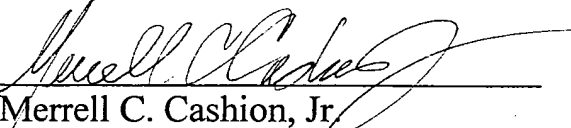
mailing communications to an Applicant. Thus, there is no evidence that the Notification of Non-Compliant Appeal Brief was mailed by the Office properly.

Appellant's Petition under 37 C.F.R. § 1.137(a) of May 30, 2011 and accompanying showing is to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. Accordingly, the Petition to revive the application 37 C.F.R. § 1.137(a) is **granted**. The Appeal Brief filed concurrently with this petition will be entered into the record.

#### DECISION

In view of the foregoing, the Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a) filed May 30, 2011 is GRANTED.

The Appeal Brief filed May 30, 2011 will be entered into the record. The application will be returned to the Examiner for preparation of an Examiner's Answer or other action, as appropriate.

  
Merrell C. Cashion, Jr.  
Case Management Administrator